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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-141

13 KELVIN G. BROWN
14 14903 South Castlegate Avenue
Compton, CA 90221

A C C U S A T I O N

15 Registered Nurse License No. 590541

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Ruth Ann Terry, M.P.H., R.N. brings this Accusation solely
21 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs (Board).

23 2. On or about October 30, 2001, the Board issued Registered Nurse License
24 Number 590541 to Kelvin G. Brown (Respondent). The Registered Nurse License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on December
26 31, 2008, unless renewed.

27 **JURISDICTION**

28 3. This accusation is brought before the Board, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 2750 of the Business and Professions Code ("Code") provides, in
4 pertinent part, that the Board may discipline any licensee, including a licensee holding a
5 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
6 2750) of the Nursing Practice Act.

7 5. Section 2764 of the Code provides, in pertinent part, that the expiration of
8 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
9 against the licensee or to render a decision imposing discipline on the license. Under Section
10 2811, subdivision (b), the Board may renew an expired license at any time within eight years
11 after the expiration.

12 6. Section 118, subdivision (b), provides that the suspension, expiration,
13 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
14 disciplinary action during the period within which the license may be renewed, restored, reissued
15 or reinstated.

16 7. Section 2761 of the Code states:

17 "The board may take disciplinary action against a certified or licensed nurse or
18 deny an application for a certificate or license for any of the following:

19 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

20 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
21 nursing functions. . . .

22 "

23 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violating of, or conspiring to violate any provision or term of this chapter [the
25 Nursing Practice Act] or regulations adopted pursuant to it.

26 "

27 "(f) Conviction of a felony or of any offense substantially related to the

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1 qualifications, functions, and duties of a registered nurse, in which event the record of the
2 conviction shall be conclusive evidence thereof.”

3 8. California Code of Regulations, title 16, section 1444, states:

4 “A conviction or act shall be considered to be substantially related to the
5 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
6 present or potential unfitness of a registered nurse to practice in a manner consistent with the
7 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
8 following:

9 “(a) Assaultive or abusive conduct including, but not limited to, those violations
10 listed in subdivision (d) of Penal Code Section 11160.

11 “(b) Failure to comply with any mandatory reporting requirements.

12 “(c) Theft, dishonesty, fraud, or deceit.

13 “(d) Any conviction or act subject to an order of registration pursuant to Section
14 290 of the Penal Code.”

15 9. Section 2765 of the Code provides:

16 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
17 made to a charge substantially related to the qualifications, functions and duties of a registered
18 nurse is deemed to be a conviction within the meaning of this article. The board may order the
19 license or certificate suspended or revoked, or may decline to issue a license or certificate, when
20 the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or
21 when an order granting probation is made suspending the imposition of sentence, irrespective of
22 a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such
23 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
24 verdict of guilty, or dismissing the accusation, information or indictment.”

25 10. Section 2762 of the Code states:

26 “In addition to other acts constituting unprofessional conduct within the meaning
27 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
28 under this chapter to do any of the following:

1 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
2 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
3 or administer to another, any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
5 defined in Section 4022.

6 “(b) Use any controlled substance as defined in Division 10 (commencing with
7 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
8 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
9 injurious to himself or herself, any other person, or the public or to the extent that such use
10 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
11 license.

12 “(c) Be convicted of a criminal offense involving the prescription, consumption,
13 or self-administration of any of the substances described in subdivisions (a) and (b) of this
14 section, or the possession of, or falsification of a record pertaining to, the substances described in
15 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
16 thereof.

17 11. Section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations
19 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 **CONTROLLED SUBSTANCE ”**

22 12. “Cocaine” is a Schedule II controlled substance as designated by Health
23 and Safety Code Section 11055, subdivision (b), and is categorized as a “dangerous drug”
24 pursuant to Business and Professions Code section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of Substantially Related Crimes)**

27 13. Respondent is subject to disciplinary action under sections 2761,
28

1 subdivision (f), and 2765 as defined in California Code of Regulations, title 16, section 1444,
2 subdivision (a), because he was convicted of crimes substantially related to the qualifications,
3 functions of duties of a registered nurse. On August 18, 2008, in a criminal proceeding entitled
4 *People v. Brown* (Super. Ct. Los Angeles County, 2008, No. 7LG10393), Respondent was
5 convicted of two misdemeanors: Penal Code section 647, subdivision (f) (public intoxication),
6 and Health and Safety Code section 11364 (possession of pipe/drug paraphernalia). The
7 circumstances of the convictions are as follows:

8 ..14. On or about October 16, 2007, two police officers observed Respondent
9 walk across 10th Street in Long Beach, California, against a solid red “Don’t Walk” signal. When
10 they contacted Respondent, the officers observed objective symptoms of recent narcotics’ use
11 including Respondent’s droopy eyelids, difficulty staying awake, and speaking with a raspy
12 voice. In addition, Respondent was unable to articulate his destination. The officers arrested
13 Respondent for being under the influence of a controlled substance. Upon searching Respondent,
14 they found a clear glass tube with a mesh filter on one end that contained what appeared to be a
15 residue of crack cocaine. Respondent admitted the pipe was his and that he had smoked some
16 “rock” approximately one hour before his arrest. Respondent told the officers that he is an
17 addict, not a criminal, had been arrested for cocaine use before, and did not believe the Board of
18 Registered Nursing would do anything to him.

19 15. On October 17, 2007, a 3-count criminal complaint was filed against
20 Respondent alleging violations of Penal Code section 647, subdivision (f), Health & Safety Code
21 section 11364, and Vehicle Code section 21456, subdivision (b) (pedestrian walking against “Do
22 not walk” sign, an infraction). Respondent kept several scheduled court appearances but failed to
23 appear on January 29, 2008, and a bench warrant issued for his arrest.

24 16. On August 18, 2008, Respondent pled nolo contendere to the two
25 misdemeanor charges. Following his conviction, Respondent was placed on 36 months
26 probation and given credit for serving 10 days in jail.

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1 Respondent fled the location. A glass pipe with residue in it was found on Respondent's person.
2 On October 27, 2008, Respondent admitted to an investigator that he had had a crack pipe in his
3 possession on August 13, 2008, and that he first started using crack in 2003. Respondent told the
4 investigator that he had last used crack approximately a year before.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Possession/Use of Controlled Substance)**

7 21. Respondent is subject to disciplinary action under sections 2761,
8 subdivisions (a) and (d), and 2762, subdivisions (a) and (b), in that on or about February 24,
9 2005, Respondent manifested objective symptoms of being in possession or under the influence
10 of a controlled substance. The circumstances are as follows:

11 22. At approximately 1510 hours on February 24, 2005, a peace officer was
12 dispatched from the Bakersfield Police Department to a report of a suspect masturbating near
13 juveniles getting out of school. The suspect was described as a black male adult in his 20's
14 wearing a red shirt and tan pants. Respondent matched the description. The officer observed
15 Respondent sweating profusely even though it was a cool day, that his extremities were jerking,
16 that he was slow to respond to the officer's questions, his pupils were dilated and non-reactive to
17 light, his eyelids had tremors, he had a white coating on his tongue, and a strong chemical odor
18 emanating from his mouth. The officer concluded that Respondent manifested objective
19 symptoms of being under the influence of a central nervous system stimulant. Respondent tried
20 to pull away from the officer when told he would be searched for weapons. The officer applied
21 a twist-lock hold to Respondent's left arm, did a pat-down search, and found a glass cocaine-base
22 smoking pipe in Respondent's left front pants' pocket. When a second peace officer arrived,
23 Respondent tried more aggressively to extricate himself from the first officer. Eventually, using
24 a leg sweep and pepper spray, the officers succeeded in handcuffing Respondent and placing him
25 in the patrol car.

26 23. On March 10, 2005, Respondent was charged in *People v. Brown* (Super.
27 Ct. Kern County, 2005, No. 670795) with three misdemeanor counts: Health & Safety Code
28 sections 11064 (possession controlled substance paraphernalia), and 11550, subdivision (a)

(using/under influence of controlled substance), and Penal Code section 148, subdivision (a)(1) (resisting arrest).

24. On March 21, 2005, a \$10,000.00 bench warrant issued when Respondent failed to appear for his arraignment. On May 1, 2008, the bench warrant was inactivated. On October 15, 2008, the bench warrant was re-activated. On or about October 29, 2008, Respondent was arrested on the outstanding bench warrant and ordered to appear in Kern County Superior Court, Dept. G, at 8:30 a.m. on November 19, 2008. Complainant filed a Penal Code section 23 motion to be heard on that date recommending that Respondent's license to practice registered nursing be suspended pending resolution of the criminal proceedings and anticipated disciplinary action before the Board of Registered Nursing. When Respondent failed to appear, the court issued a bench warrant for \$30,000.00.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number 590541, issued to Kelvin G. Brown.

2. Ordering Respondent to pay the Board the reasonable costs of the

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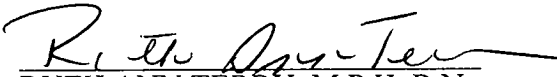
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1 investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3; and

3 3. Taking such other and further action as deemed necessary and proper.

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5 DATED: 12/11/08

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8 
RUTH ANN TERRY, M.P.H, R.N.
Executive Officer
Board of Registered Nursing
State of California
Complainant

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